

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 21 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

TATYANA EVGENIEVNA DREVALEVA,

No. 22-16150

Plaintiff-Appellant,

D.C. No. 3:22-cv-01585-EMC

v.

MEMORANDUM\*

ALAMEDA HEALTH SYSTEM;  
CALIFORNIA DEPARTMENT OF  
INDUSTRIAL RELATIONS,

Defendants-Appellees.

Appeal from the United States District Court  
for the Northern District of California  
Edward M. Chen, District Judge, Presiding

Submitted March 14, 2023\*\*

Before: SILVERMAN, SUNG, and SANCHEZ, Circuit Judges.

Tatyana Evgenievna Drevaleva appeals pro se from the district court's judgment dismissing her action alleging federal and state law claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Quillin v. Oregon*, 127

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

F.3d 1136, 1138 (9th Cir. 1997) (dismissal on the basis of Eleventh Amendment immunity); *Mpoyo v. Litton Electro-Optical Sys.*, 430 F.3d 985, 987 (9th Cir. 2005) (dismissal on the basis of res judicata). We affirm.

The district court properly dismissed Drevalova's claims against defendant California Department of Industrial Relations on the basis of Eleventh Amendment immunity. *See Krainski v. Nev. ex rel. Bd. of Regents of Nev. Sys. of Higher Educ.*, 616 F.3d 963, 967 (9th Cir. 2010) ("The Eleventh Amendment jurisdictional bar applies regardless of the nature of the relief sought and extends to state instrumentalities and agencies.").

The district court properly dismissed on the basis of res judicata Drevalova's claims against Alameda Health System because these claims involved the same primary right raised in a prior state court action that resulted in a final judgment on the merits. *See San Diego Police Officers' Ass'n v. San Diego City Emps.' Ret. Sys.*, 568 F.3d 725, 734 (9th Cir. 2009) (federal court must follow state's preclusion rules to determine effect of a state court judgment); *Boeken v. Philip Morris USA, Inc.*, 230 P.3d 342, 348 (Cal. 2010) (under the primary rights theory, "a judgment for the defendant is a bar to a subsequent action by the plaintiff based on the same injury to the same right, even though [she] presents a different legal ground for relief" (citation and internal quotation marks omitted)).

The district court did not abuse its discretion by declaring Drevalova a

vexatious litigant and entering a pre-filing review order against her because all of the requirements were met. *See Ringgold-Lockhart v. County of Los Angeles*, 761 F.3d 1057, 1062 (9th Cir. 2014) (setting forth standard of review and requirements for pre-filing review orders).

The district court did not abuse its discretion by rejecting Drevaleva's proposed motion to vacate the district court's judgment because the filing was within the scope of the district court's pre-filing vexatious litigant order. *See id.*; *Weissman v. Quail Lodge, Inc.*, 179 F.3d 1194, 1197 (9th Cir. 1999) (“[P]re-filing orders may enjoin the litigant from filing further actions or papers unless he or she first meets certain requirements, such as obtaining leave of the court . . .” (internal citation omitted)).

The district court did not abuse its discretion by denying Drevaleva's request to recuse Judge Chen because Drevaleva failed to file an affidavit establishing extrajudicial bias or prejudice. *See* 28 U.S.C. § 455 (setting forth circumstances requiring recusal); *United States v. Sibla*, 624 F.2d 864, 869 (9th Cir. 1980) (setting forth standard of review).

Appellee California Department of Industrial Relations' motion for judicial notice (Docket Entry No. 27) is denied as unnecessary.

Appellant's motion for an extension of time to file the reply brief (Docket Entry No. 36) is denied.

**AFFIRMED.**